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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,711	02/19/2004	Stephen D. Johnson	502481	5561

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EXAMINER	
BALDWIN, GORDON	
ART UNIT	**PAPER NUMBER**
1775	

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/782,711	JOHNSON, STEPHEN D.	
	Examiner	Art Unit	
	Gordon R. Baldwin	1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *20061107*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of the term liquid is considered to be vague and indefinite since that could encompass almost anything in a liquid state, including a plethora of liquids that contain some water in them.

Claim Rejections - 35 USC § 102

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Straight (Pat. No. 2,231,485).

Consider claims 1 and 2, Straight teaches a plurality of unpopped corn seeds or kernels strung upon a string. (Fig. 1-3 and Col. 1 lines 48-55 and Col. 2 lines 1-10)

Consider claim 9, Straight teaches the use of a sealant the encapsulating the seeds and the string, which is considered to also seal the seed and prevents a loss of moisture. (Col. 2 lines 38-44)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3, 4, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Straight (Pat. No. 2,231,485).

Consider claims 3 and 4, Straight teaches the stringing of unpopped corn seeds above, however the spacing apart of the individual unpopped corn seeds is considered to be obvious to a person of ordinary skill in the art as a matter relating to ornamentation, which has no mechanical function can cannot be relied upon to patentably distinguish the claimed invention from the prior art. (In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947)) The spacing of the unpopped corn kernels is also considered to be a mere rearrangement of parts of the invention and considered to be obvious to one having ordinary skill in the art at the time the invention was made since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Consider claim 10, Straight teaches the use of sealants for unpopped corn seeds, but does not teach the use of a wax base sealant. It would have been obvious to one having ordinary skill in the art at the time of the invention to use a wax based sealant on unpopped corn kernels, since it has been held to be within the general skill of

a worker in the art to select a known material on the basis of it suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

Claims 5-8,11-24 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Straight (Pat. No. 2,231,485) and further in view of Borek (Pat. No. 4,219,573).

Consider claims 5-8, 12, 16-18 and 25, Straight teaches a string of unpopped corn kernels but does not teach a microwavable package to pop or cook corn kernels. However, Borek teaches the placement of unpopped corn kernels in the microwavable package with oil (considered to encompass grease). (Col. 2 lines 42-66) Borek also teaches that the kernels and oil are to be mixed into a mass (considered to be a predetermined organized manner) and are to be retained in a specific area of the package to allow for popping of the corn kernels. (Col. 3 lines 33-50) It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the jewelry of unpopped kernels of corn on a string of Straight with the popcorn popping method of Borek to make an aesthetically different piece of strung jewelry encompassing popped corn kernels.

Consider claim 11, 19 and 23, Borek teaches that the corn kernels are to be popped in the sealed package in the microwave and is also considered to teach the seeds having a proper water content to facilitate popping of the kernels when the microwave is activated for a sufficient length of time. (Col. 2 lines 40-69)

Consider claim 13, 14 and 24, Straight teaches in figures 1-3, that the seeds are strung through the germ and the seeds are kernels of unpopped corn.

Consider claim 15, Straight teaches the stringing of unpopped corn seeds above, however the spacing apart of the individual unpopped corn seeds is considered to be obvious to a person of ordinary skill in the art as a matter relating to ornamentation, which has no mechanical function can cannot be relied upon to patentably distinguish the claimed invention from the prior art. (In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947)) The spacing of the unpopped corn kernels is also considered to be a mere rearrangement of parts of the invention and considered to be obvious to one having ordinary skill in the art at the time the invention was made since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Consider claim 20, Borek also teaches the popping of corn kernels that are not string within the container, therefore the combination of Straight and Borek are considered to encompass not only the strung kernels, but also individual kernels for consumption as food.

Consider claim 21, Straight teaches the use of sealants for unpopped corn seeds. (Col. 2 lines 37-43) The sealant is considered to hold moisture at a constant rate.

Consider claim 22, Straight teaches that the unstrung kernels are soaked in aniline or another dye, which are considered to be a liquid. (Col. 2 lines 35-40) Additionally, the corn kernels of Borek would also be considered to have a soaking in water since they are more than likely washed in a solution containing water prior to being mixed with the oil and salt and placed in the packaging.

Consider claim 26, Borek teaches the use of a thermal insulating member (8) (considered to encompass a susceptor foil) used to insulate and contribute to the microwave's heating properties, to pop the unpopped kernels of corn. (Col. 3 lines 1-33)

Consider claim 27, Borek teaches a plurality of retaining members securing the corn kernels in the package, such as the tape (5) and the string (6). (Col. 2 lines 60-67) These retrains are considered to be breakable when the corn is popped.

Consider claim 28, the arrangement of the popped and strung popcorn kernels is considered to be intended use and is therefore not considered to be a patentable distinction over the prior art. Additionally, the corn kernel jewelry of Straight could be made in such a length that it could obviously be used a garland-type of decoration on a tree or any other object.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon R. Baldwin whose telephone number is (571)272-5166. The examiner can normally be reached on M-F 7:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GRB

JENNIFER MCNEIL
SUPERVISORY PATENT EXAMINER
11/27/06